IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.187 OF 2006

The Commissioner of Central Excise ..Appellant.

V/s.

M/s.Ispat Industries Ltd. ..Respondent.

Mr.P.S.Jetly i/b. T.C. Kaushik for appellant.

Mr.Prakash Shah i/b. PDS Legal for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 19TH JULY, 2007.

P.C. : -

1. The Commissioner of Central Excise has filed this appeal under section 35G of the Central Excise Act, 1944 stating that the following questions of law arise from the order of the Tribunal dated 21/9/2005, namely :-

> " Whether an assessee can avail Modvat credit on capital goods namely M.S. Angles, M.S. Sheets, Plates, Channels, Pipes and Tubes under Rule 57Q of the Central Excise Rule, 1944 although these goods are not used in relation to the manufacture of the final products ? "

2. In the present case, the CESTAT has given a finding of fact that the angles, channels, plates, etc.

on which credit is sought to be denied were structural items for the machinery required to make the machines function without any vibration or movement. The Tribunal has further recorded a finding that the aforesaid structural items are clearly linked with the machinery which is used for the production of the final product. This Court in the case of **Commissioner of Central Excise V/s. Indian Semless Steels & Alloys Ltd.** reported in **2005 (190 E.L.T. 12 (Bom.)** has held that the pipes and tubes used to carry water for cooling inert sphere in assessee's plant were used in the manufacture of final product and hence entitled to Modvat credit as capital goods. Similarly, the Apex Court in the case of **Vikram Cement V/s. Commissioner of Central Excise** reported in **194 E.L.T. 3 (S.C.)** has held that inputs used within the factory would be entitled to Modvat credit. In the light of the aforesaid decisions and in view of the finding of fact recorded by the Tribunal, we are of the opinion that the decision of the Tribunal cannot be faulted. No substantial question of law arises out of the order of the CESTAT.

3. Accordinglty, appeal is dismissed with no order as to costs.

(F.I.REBELLO, J.)

(J.P.DEVADHAR, J.)